IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 168 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NITIN VASAVADA

Versus

KAMAL KUMAR VYAS

Appearance:

1. Criminal Revision Application No. 168 of 2003

MR HIMANSHU J MEHTA for Petitioner No. 1

MR ABHAYKUMAR P SHAH for Respondent No. 1

..... for Respondent No. 2

PUBLIC PROSECUTOR for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 25/02/2004

ORAL JUDGEMENT

Heard learned counsel appearing for the

petitioner.

2. This revision application is preferred by original complainant-Nitin Vasavada against the order discharging the original accused Nos. 5 & 6 of Criminal Case No. 2705 of 2001 pending in the Court of learned JMFC, Gandhinagar of the offence punishable under Section 138 of Negotiable Instruments Act (hereinafter referred to as N.I. Act).

3. The learned counsel appearing for the petitioner Mr. H.J.Mehta has taken me through the relevant contentions raised in the memo and has pointed out that the order passed by the learned Sessions Judge is erroneous in view of the provisions of sub-Section 2 of Section 141 of the N.I.Act and it is submitted that two important documents produced by the petitioner before the Court, whereby the amount payable to the present petitioner has been confirmed by accused No.5-Kamal Kumar Vyas and it is submitted by Mr. Mehta that he was a Chairman at the relevant point of time. This aspect ought to have been considered in correct perspective by the learned Sessions Judge and this failure has brought the present petitioner before this Court.

4. In response of the submissions advanced by Mr. Mehta, the learned counsel appearing for original accused Nos. 5 & 6 Mr. S.V.Raju has pointed out that the finding recorded by the learned Sessions Judge is in accordance with law and it is in conformity with the decision of this Court, reported in case of Mayurbhai N. Vyas v. State of Gujarat & Another, 2003 (3) GLR 1918. Accused Mayurbhai N. Vyas against whom proceedings initiated by the very complainant has been quashed in exercise of powers vested with the Court under Section 482 of Cr.P.C. Para 9 of the complaint deals with three different accused and accused No.2, Mayurbhai is now no more accused because of the quashing of the proceedings against him. So, it would not be either legal or proper to say that the learned Sessions Judge has committed grave error of law. On the contrary, according to Mr. Raju, the learned Sessions Judge has followed the ratio of the decision of the above cited case. On parity also the revision be dismissed. This submission is accepted.

5. The anxiety of the present petitioner is that, ultimately, while leading evidence, if it transpires that Mr. Kamal Kumar Vyas accused No.5 being Chairman was aware or otherwise responsible for the issuance of cheque in question, then, obviously, at the instance of the complainant or, the Court by itself, suo motu, joint

accused No.5 as accused in the trial in view of the scheme of Section 319 of Cr.P.C. but, this scheme of Section 319 Cr.P.C. would not help the present petitioner at this stage. This order shall have no effect of acquittal.

6. For short, I do not find any merit in the revision application, hence same, therefore, is dismissed in light of the above observations. Rule is discharged.

(C.K.Buch,J)
Jayanti*